

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NELL H. ROLLINS and FEDERAL JUCIDIARY,
U.S. DISTRICT COURT, Montgomery, Ala.

*Docket No. 97-672; Submitted on the Record;
Issued September 30, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a six percent permanent impairment of the right arm for which she has received a schedule award.

The Board has duly reviewed the case record and finds that the medical evidence of record does not establish that appellant has more than a six percent permanent impairment of the right arm.

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of body members listed in the schedule. The Act, however, does not specify the manner in which the percentage of loss of a member shall be determined. The method for making such a determination rests in the sound discretion of the Office of Workers' Compensation Programs. The Office has adopted, and the Board has approved, the use of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,³ as an appropriate standard for evaluating schedule losses.⁴

In the present case, the Office has accepted that, in the course of her federal employment, appellant sustained a sprain to her right elbow and forearm which resulted in epicondylitis, requiring surgery and physical therapy. By decision dated October 24, 1996, the Office granted appellant a schedule award for a six percent permanent loss of use of the right arm, and awarded appellant 18.72 weeks of compensation.

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ A.M.A., *Guides* (4th ed. 1993).

⁴ *James A. Sellers*, 43 ECAB 924 (1992).

The Office based its award on the totality of the medical evidence of record. In his report dated May 22, 1996, Dr. Roland A. Hester, a Board-certified orthopedic surgeon and appellant's treating physician, stated that appellant was doing better but still had some pain, but would try to live with it rather than undergo further surgery. In a follow-up report dated May 29, 1996, Dr. Hester stated that he felt appellant had a six percent impairment to the right upper extremity, but did not explain how he arrived at this figure.

By letter dated July 23, 1996, the Office asked Dr. Hester to evaluate appellant pursuant to the fourth edition of the A.M.A., *Guides*, for the purpose of determining her entitlement to a schedule award.

In response, on August 16, 1996, Dr. Hester completed the Office's Form CA-1303 for the purpose of evaluating permanent impairment. The physician indicated that appellant had reached maximum medical improvement on May 29, 1996, and retained full extension, flexion, pronation and supination with no joint ankylosis. In addition, Dr. Hester noted that appellant had an impairment of function of the arm due to sensory deficit, pain or loss of strength estimated at six percent. Dr. Hester did not specifically reference the A.M.A., *Guides*.

The Office forwarded Dr. Hester's report to an Office medical adviser for his review. The medical adviser applied Dr. Hester's findings to the applicable sections of the A.M.A., *Guides*, and concurred with Dr. Hester's findings of a six percent impairment of the right arm due to pain and weakness.

The Board has reviewed the medical adviser's calculations pursuant to the A.M.A., *Guides* and concludes that they are proper.⁵ As appellant has a six percent loss of use of her right upper extremity, she is entitled to six percent of the 312 weeks of compensation allotted by the Act for the complete loss of use of an arm, or 18.72 weeks.⁶ Therefore, the Office properly determined the number of weeks of compensation to which appellant is entitled under the schedule award.

⁵ *Lena P. Huntley*, 46 ECAB 643 (1995). The Office medical adviser graded appellant's pain as equating to a 25 percent deficit pursuant to Table 11, page 48 of the A.M.A., *Guides*, and graded appellant's weakness as equivalent to a 13 percent deficit pursuant to Table 12, page 49. He then found that, pursuant to Table 14, page 52, the maximum impairment due to pain was 5 percent, which when multiplied by the degree of deficit for pain, 25 percent, yielded a permanent impairment rating for pain of 1.25 percent. Similarly, multiplying the 13 percent deficit derived for appellant's weakness by 35 percent, the maximum allowable percentage impairment for weakness, pursuant to Table 14, page 52, yielded a permanent impairment rating for weakness of 4.55 percent. Adding these percentages and rounding the result to the nearest whole number, yielded a final permanent impairment rating of 6 percent.

⁶ 5 U.S.C. § 8107(c)(1).

The decision of the Office of Workers' Compensation Programs dated October 24, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 30, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member